

press or implied agreement, indicating an intention to convert it into personal estate, will, when the claims against the partnership have been satisfied, and the partnership accounts adjusted, be treated in a court of equity as at law, as real estate, and be chargeable with the dower of the widow.

In this case, the Court of Appeals have, in express terms, decided, that the widow of Samuel Hayes, is entitled to a proper allowance out of the proceeds of the sales of the partnership lands, as an equivalent for her dower, if the partnership was solvent at the period of its dissolution. And the question is, what this proportion shall be, and whether, in addition to the equivalent for dower, she is not entitled to rents and profits, from the period of the death of her husband until the sale of the property.

The court of Appeals have said nothing, in regard to any claim of the widow for arrears of dower, or interest on those arrears; nor have they decided whether she has a lien for her dower, on the proceeds of sale. All that has been decided, is, that when the claims against the partnership have been satisfied, the accounts adjusted, and the object of the trust fulfilled, the widow is to be entitled to an allowance out of the proceeds of the sales, as an equivalent for her dower in her husband's interest in the real estate.

The real estate sold for \$33,771 27, and the Auditor reports, that on the 17th of September, 1845, that being the date of the last sale, the proportion of the widow, as an equivalent for the interest of her husband therein, was 1-8, she being about forty-seven years of age, amounting to \$1,731 91.

It is insisted on the part of the complainants, that this mode of stating the account is erroneous; *first*, because the proportion should have been determined by her age at the time of the death of her husband, in 1825; and, *secondly*, because no allowance is made her, for arrears of dower from that time.

My opinion is, that the death of the husband, in 1825, is the epoch to be taken, in fixing the allowance to be made to the widow in lieu of her dower, and that she must be paid the equivalent for the value of her interest at that time, according